D.T.E. 99-42/43-A

Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement.

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SUPPLEMENTAL ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

In August 1999, the Department of Telecommunications and Energy ("Department") issued an Order, D.T.E. 99-42/43, 99-52 (1999), on the consolidated arbitration pertaining to the interconnection agreement(s) between MediaOne Telecommunications of Massachusetts, Inc., now AT&T Broadband ("AT&T Broadband"or "ATTB"), Greater Media Telephone, Inc. ("Greater Media"), and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, now Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon" or "VZ-MA"). In March 2000, the Department issued an Order, D.T.E. 99-42/43, 99-52 (2000), on the parties' motions for reconsideration and clarification of the Department's August 1999 Order.[(1)] Despite concerted efforts by the parties, AT&T Broadband and Verizon were unable to come to agreement on several

additional issues pertaining to their interconnection agreement, which they identified as "impasse issues." The parties requested assistance from the Department to resolve these issues.[(2)] With the agreement of the parties, on November 28, 2000, the Department established a procedural schedule in order to receive supplemental briefs and affidavits on one of the impasse issues - appropriate rates for dedicated transport of local traffic from a mid-span fiber meet. On December 14, 2000, the Department issued its Order on Impasse Issues, D.T.E. 99-42/43 (2000) ("Order on Impasse Issues"), addressing the impasse issues identified by the parties. In the Order on Impasse Issues at 9, the Department established interim rates for transport of local traffic from a mid-span meet, subject to true-up, while the issue remained under further review by the Department.[(3)] On January 12, 2001, AT&T Broadband and Verizon filed Supplemental Briefs and Supporting Affidavits on the transport rates issue. Verizon sponsored the affidavit of John E. Howard ("Howard Aff."). AT&T Broadband sponsored the affidavit of David J. Kowolenko ("Kowolenko Aff."). The parties filed Reply Briefs on January 30, 2001. In this Supplemental Order, the Department addresses this final outstanding issue in the parties' arbitration.

II. STANDARD OF REVIEW

Section 252(c) of the Act sets out the standards for arbitrations by state commissions. Section 252(c) states, in relevant part, that a state commission shall:

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to [section 252(d)].

Section 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Under 47 U.S.C. § 251(c)(2), each ILEC has the duty:

to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -

(A) For the transmission and routing of telephone exchange service and exchange access;

(B) At any technically feasible point within the carrier's network;

(C) That is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) On rates, terms, and conditions that are just, reasonable, and non-discriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

III. RATES FOR DEDICATED TRANSPORT FROM A MID-SPAN FIBER MEET

A. Introduction

The Department must decide whether switched access rates or unbundled network elements ("UNE") interoffice transmission facilities ("IOF")[(4)] rates should apply to transport a carrier's terminating local traffic from a mid span fiber meet ("MSM")[(5)] to the other carrier's remote tandem or end office.[(6)] In the Order on Impasse Issues at 9, the Department set the interim rate at the UNE IOF rate, subject to true-up, pending the conclusion of the Department's investigation on this issue.

B. Positions of the Parties

1. AT&T Broadband

AT&T Broadband argues that TELRIC-based UNE IOF rates are the proper charges for the transport facility at issue in this case (ATTB Brief at 3). AT&T Broadband argues that the transport it seeks runs between an ILEC SWC and an ILEC tandem switch, and, by FCC definition, such facilities are clearly IOF (id. at 5-6). AT&T Broadband asserts that Verizon cannot claim such facilities are an "access service" and not UNE IOF simply because the facilities connect directly to an ILEC switch (id. at 7). AT&T Broadband contends that the Department clearly established in its Consolidated Arbitrations proceeding that Verizon could not require CLECs to collocate in order to access UNEs, and, therefore, AT&T Broadband asserts that Verizon's claim that it cannot provide UNE access without collocation is incorrect (id. at 7-9). AT&T Broadband points to Verizon's offering of a "switch sub-platform" (i.e., a combination of switch and IOF transport UNEs) in D.T.E. Tariff No. 17 as proof that Verizon is incorrectly characterizing the

transport facilities in the instant matter as an access service (id. at 9). AT&T Broadband further argues that the terms and conditions in Section 6 of D.T.E. Tariff No. 15, dealing with switched access, indicate that Verizon's switched access service uses common transport, not dedicated transport, as in the present case, and that the transport facility at issue in the present case is not the transport element that is described in D.T.E. Tariff No. 15 (id. at 10-11). In addition, AT&T Broadband argues that Verizon's claim that an IOF UNE cannot be accessed through a MSM is contradicted by the FCC's mandate that access to UNEs must be provided from any technically feasible point, which includes, AT&T Broadband argues, Verizon's terminating electronics at Verizon's end of the MSM (id. at 11-12). AT&T Broadband asserts that although the FCC has stated that a joint financing arrangement between CLEC and ILEC for constructing and provisioning a MSM "doesn't make sense" if only the CLEC were to use the MSM, the FCC's statement does not apply when the MSM is used for both interconnection and access to UNEs (id. at 13-15). AT&T Broadband also argues that it should not be required to bear the full costs of the existing MSMs in order to access UNEs from the MSMs while allowing Verizon to use the MSMs for interconnection at no cost, as Verizon suggests, nor should AT&T Broadband be required to finance and construct an additional MSM in order to obtain the access to UNEs that it seeks (id. at 15-16).

AT&T Broadband denies that it intends to charge Verizon switched access rates for transport of Verizon's local traffic beyond the MSM while seeking UNE IOF rates for transport of its own local traffic; rather, AT&T Broadband contends that UNE IOF rates are the proper rates for both parties (ATTB Reply Brief at 10). AT&T Broadband further denies Verizon's assertion that AT&T Broadband seeks to alter the financing arrangements of the existing MSMs to provide AT&T Broadband with sole ownership of the MSMs in order to charge Verizon for its use of the MSM (id. at 9-10). In addition, AT&T Broadband argues that Verizon's reliance on specific language in D.T.E. Tariff No. 17 is misplaced, and suggests that Verizon's refusal to consider alternatives to the terms and conditions in that tariff indicates that Verizon is failing to negotiate its interconnection agreement with AT&T Broadband in good faith (id. at 3-8).

Lastly, AT&T Broadband argues that, even if Verizon is correct that the transport facilities from Verizon's SWC to Verizon's applicable remote tandem or end office are not unbundled IOF, AT&T Broadband argues that the 1996 Act mandates that the proper basis for establishing transport rates is cost-based pricing using TELRIC principles (ATTB Brief at 16-18). Because the switched access rates Verizon seeks to charge for the transport of AT&T Broadband's local traffic are unrelated to Verizon's costs to transport the traffic, AT&T Broadband argues that Verizon's switched access rates are improper in the instant case (id.).

2. Verizon

Verizon argues that switched access dedicated trunk transport rates, as set forth in D.T.E. Tariff No. 15, Section 6.2.2, should apply to either party's terminating traffic beyond the MSM (VZ-MA Brief at 2). Verizon suggests that AT&T Broadband proposes to charge Verizon switched access rates to transport Verizon's terminating traffic beyond the MSM

to AT&T Broadband's applicable IPs, and if the Department were to deny Verizon the ability to charge AT&T Broadband the same rates for the same transport, such disparate treatment would be grossly unfair (id. at 9-10). Switched access rates are proper for both parties, asserts Verizon, because a MSM arrangement is not a UNE; rather, it is by definition a jointly owned and provisioned form of interconnection architecture shared by the CLEC and ILEC (id. at 3-4). Verizon characterizes an MSM arrangement as an end-to-end service which transports CLEC terminating traffic from the POI to the appropriate ILEC IP (id. at 5). Verizon states that the POI in a MSM arrangement remains on the ILEC's network, and, therefore, AT&T Broadband would be using the ILEC's network to access UNEs, a situation Verizon argues is entirely at odds with the FCC's concept of UNE access (id. at 4-5).[(7)] Verizon asserts that the FCC has specifically held that MSM arrangements "only make sense" for interconnection but not for unbundled access (id. at 5). According to Verizon, if a CLEC wishes to incur UNE IOF charges, as opposed to switched access charges, for transport on Verizon's network, the CLEC must use collocation in all Verizon's offices in and beyond Verizon's gateway central office (Howard Aff., Diagram #2 described).[(8)] Since a MSM arrangement does not include collocation, argues Verizon, a MSM arrangement is not UNE IOF, and UNE IOF rates are not applicable (VZ-MA Brief at 5-7). Verizon further argues that AT&T Broadband's proposal that Verizon offer unbundled IOF, including cross-connects, as part of a MSM arrangement would constitute a new UNE combination that does not exist in Verizon's network (id. at 7-8). Verizon asserts that the FCC does not require an ILEC to provide a new UNE combination not existing in the ILEC's network, unless it is specifically prescribed by the FCC (id.).

Verizon points out that when a CLEC purchases UNE IOF, the facilities become part of the CLEC's network, and the CLEC has the responsibility for determining routing, monitoring, and identifying trouble on that facility (VZ-MA Reply Brief at 5). Conversely, when Verizon provides transport from a MSM, Verizon is responsible for designing, engineering, monitoring, maintaining, and managing direct trunk transport as an end-to-end service (id. at 5-6). Verizon does not deny that AT&T Broadband could purchase dedicated UNE IOF from Verizon for the purposes of transporting its traffic from the SWC of the MSM to the appropriate IP on Verizon's network; however, in order for AT&T Broadband to do so, argues Verizon, AT&T Broadband must configure, order, and operate those facilities as UNEs in conformance with D.T.E. Tariff No. 17 (id. at 6).[(9)] Verizon replies to AT&T Broadband's assertion that the Department's Consolidated Arbitrations proceeding precludes Verizon from requiring collocation to access UNEs by pointing out that the Department's decision in that proceeding simply required Verizon to provide an alternative method of provisioning UNEs that does not impose a facilities requirement (id. at 7). Verizon asserts that it has met this obligation by making available to CLECs several offerings, including UNE-P, EEL, and switch sub-platform (id.).

Verizon further argues that but for its agreement to build the MSM arrangement for purposes of interconnection, Verizon might not have combined the same components on its side of the meet point, and allowing AT&T Broadband to convert an existing MSM that was constructed solely for interconnection purposes would be unfair and distort the concept of unbundled elements (VZ-MA Reply Brief at 4). Further, Verizon argues that

AT&T Broadband's proposal to re-define the MSM arrangement by purchasing all the shared facilities and charging Verizon for all transport terminating over those facilities would be a substantial alteration of the parties' MSM agreement, would be extremely unfair to Verizon, and should not be permitted (VZ-MA Brief at 10-11). If the parties' MSM agreement were thus converted, asserts Verizon, AT&T Broadband should pay Verizon's entire costs to build out its share of the MSM arrangement and AT&T Broadband would nonetheless be responsible for collocation charges under what would be a new UNE access arrangement (id. at 11). Verizon also requests a reasonable opportunity to evaluate the economic consequences that would result from such a new arrangement and to investigate alternative methods of transport (id. at 11-12). Lastly, because Verizon asserts that switched access rates are the proper charge for transport of traffic between a MSM and the appropriate IP, Verizon requests that the Department allow Verizon to true-up the interim lower UNE IOF rate set by the Department in the Order on Impasse Issues at 9 (id. at 9).

C. Analysis & Findings

As an initial matter, we disregard Verizon's claim that AT&T Broadband intends to charge Verizon switched access rates for transport of Verizon's traffic beyond the MSM while seeking to obtain UNE IOF rates for Verizon's transport of AT&T Broadband's traffic. In its Reply Brief, AT&T Broadband expressly denies that it is seeking to charge a different rate from the rate it is willing to pay, and confirms its position that UNE IOF rates should be reciprocal (ATTB Reply Brief at 10). Therefore, the issue before us today is whether switched access rates or UNE IOF rates should apply to transport by both carriers. For the reasons stated below, we conclude that UNE IOF rates should apply.

We first address Verizon's assertion that the FCC has held that MSMs "only make sense" for interconnection, not access to UNEs (VZ-MA Brief at 5). We agree with AT&T Broadband that Verizon has taken the FCC's statement out of context. The entire text of the FCC language at issue is as follows:

In a meet point [i.e., mid-span meet] arrangement, the "point" of interconnection for purposes of section 251(c)(2) and 251(c)(3) remains on the local exchange carrier's network (e.g., main distribution frame, trunk-side of switch), and the limited build out of facilities from that point may then constitute an accommodation of interconnection. In a meet point arrangement, each party pays its portion of the costs to build out the facilities to the meet point. We believe that, although the [FCC] has authority to require incumbent LECs to provide meet point arrangements upon request, *such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) but not for unbundled access under section 251(c)(3)*. New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the

new entrant's network to another. *We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement.*[(10)]

Contrary to Verizon's position, the FCC does not conclude that MSMs "don't make sense" for access to UNEs. Rather, the FCC anticipates that a new entrant may seek UNE access via a MSM, but requires the new entrant to pay all of the economic costs of such an arrangement. This is because the meet point in an access arrangement becomes part of the new entrant's network and because the incumbent LEC does not gain value from the arrangement, as the incumbent LEC would in a section 251(c)(2) interconnection arrangement for the mutual exchange of traffic. It seems clear from the FCC's language that if AT&T Broadband were to construct a new MSM *solely* for the purpose of accessing UNEs (from which Verizon would receive no direct benefit from interconnection), AT&T Broadband would be required to pay all of the economic costs of such an arrangement. The FCC does not explicitly address in the Local Competition Order whether an existing MSM arrangement under which the carriers have agreed to split build out costs evenly, and which is being used for the mutual exchange of traffic to the mutual benefit of both ILEC and CLEC, may, *in addition*, be used for the CLEC's access to UNEs. It is this issue we must resolve first.

Section 251(c)(3) of the 1996 Act states that it is the duty of each incumbent LEC "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point . . . ." The FCC elaborated on the Act's language regarding technical feasibility by stating that "the Act does not permit [ILECs] to deny interconnection or access to unbundled elements for any reason other than a showing it is not technically feasible." Local Competition Order at ¶ 206. Further, the FCC stated, "[w]e conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point." Id. at ¶ 549. The FCC has found that the term "technically feasible" refers solely to technical and operational concerns rather than economic, space, or site limitations. Id.

at ¶ 198. The definition of "technically feasible" states that "a determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns . . . ." 47 C.F.R. § 51.5. The FCC has further stated that "the 1996 Act bars consideration of costs in determining a 'technically feasible' point of interconnection or access." Local Competition Order at ¶ 199. Regarding proof of technical feasibility, the FCC stated that pre-existing interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Id. at ¶ 198.

Therefore, consistent with the requirements of the Act and the FCC's guidelines, the Department finds as a threshold matter that Verizon must provide AT&T Broadband with the requested access to UNEs via the existing MSMs unless it is not technically feasible for Verizon to do so. The Department further finds that the FCC's directive to bar cost considerations in such an analysis leads us to conclude that the parties' agreement to split evenly the build out costs of the existing MSMs and to transport each other's traffic across the MSM at no charge does not enter into the technical feasibility analysis.[(11)]

The Department concludes that Verizon has not met its burden of proving that access to UNEs from the existing MSMs in Lawrence and Brockton is technically infeasible. Since Verizon and AT&T Broadband currently have transport facilities in place and operational from Verizon's terminating electronics in the existing MSMs, the technical feasibility requirement has been met. Verizon responds that it is simply not required by the FCC to provide access to UNEs through its own facilities (i.e., the terminating electronics of its side of the shared MSMs) (VZ-MA Brief at 4-5; VZ-MA Reply Brief at 4). Verizon, however, provides no supporting authority for this position.[(12)] Contrary to Verizon's contention, the FCC has stated that "Congress intended to obligate the [ILEC] to accommodate the new entrant's network architecture . . . . Consistent with that intent, the [ILEC] must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements." Local Competition Order at ¶ 202. Therefore, taking into consideration the definition of a MSM as a shared facility under which each party retains ownership of its half of the facility in an interconnection arrangement, and the understanding that the FCC anticipated in the Local Competition Order the use of a MSM by a CLEC for the purpose of accessing UNEs, the Department finds it reasonable to require Verizon to accept the technically feasible and "novel use" of the terminating electronics on its side of the existing, jointly-owned MSMs for AT&T Broadband's access to UNEs.

We next turn to Verizon's assertion that the transport facilities to remote tandems beyond the MSM is not UNE IOF transport. We disagree. Verizon's characterization of a MSM arrangement as solely an end-to-end service is at odds with an analysis under FCC rules. Under the Local Competition Order at ¶ 440, unbundled dedicated IOF includes, *at a minimum*, interoffice facilities between end offices and SWCs; between SWCs and interexchange carriers' points of presence; between tandem switches and SWCs; between ILEC end offices or tandems; and between ILEC wire centers and requesting carriers. The transport AT&T Broadband seeks runs between Verizon's SWCs in Lawrence and Brockton (i.e., Verizon's gateway central offices) to Verizon's remote tandems or end offices. We agree with AT&T Broadband that such transport falls within the FCC's definition of unbundled IOF. Therefore, Verizon must make such facilities available to AT&T Broadband at UNE IOF rates. In addition, the FCC has held that "'access' to an unbundled element refers to the means by which requesting carriers obtain an element's functionality in order to provide a telecommunications service. . . . [A]n incumbent LEC's duty to provide 'access' constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection (c)(2). Thus, such 'access' must be provided under the rates, terms, and conditions that apply to unbundled elements." Local Competition Order at ¶ 269. The FCC has also stated, "[w]e continue to view the cross-

connect as a means of interconnection with a network element, rather than as part of the network element." In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, at ¶ 279 (rel. November 5, 1999) ("UNE Remand Order"). Therefore, we agree with AT&T Broadband that Verizon's obligation extends to providing the necessary connections to obtain the functionality of the transport and that providing a cross-connect to access a UNE is not unlawful as a new UNE combination, as asserted by Verizon.

Verizon relies heavily on tariff language for support of its opposition to application of UNE IOF rates to each party's dedicated transport of local traffic beyond the MSMs. Verizon uses D.T.E. Tariff No. 17 as the basis for its refusal to allow AT&T Broadband access to UNE IOF from a MSM; for requiring AT&T Broadband's collocation at or a direct connection to all Verizon offices in and beyond the gateway central offices in order to obtain UNE IOF transport rates; and for charging access rates for transport from a MSM (VZ-MA Brief at 5-6, 7-9; VZ-MA Reply Brief at 5-6). In Bell Atlantic Tariffs Nos. 14 and 17, D.T.E. 98-57,

at 17-24 (2000), the Department discussed at length the relationship between tariff language and interconnection agreements. We will not repeat *in toto* our findings on this subject. Suffice it to say that tariff language, even "approved" tariff language, does not supersede or act as a substitute for good faith negotiations by both parties entering into an interconnection agreement. If we were to place undue weight on the tariff language cited by Verizon, we would, in effect, be releasing Verizon from this obligation. Verizon would then be able in future interconnection agreements to avoid its obligation to enter into good faith negotiations by simply referring the requesting CLEC to existing tariff language and refusing to alter its position on any matter contained within the tariff. Therefore, we do not read the language in D.T.E. Tariff No. 17 cited by Verizon as controlling in this case.[(13)]

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the issues under consideration in this arbitration be determined as set forth in this Order; and it is

FURTHER ORDERED: That AT&T Broadband and Verizon incorporate these determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department, pursuant to Section 252(e)(1), within 21 days from the date of this Order.

By Order of the Department,

_/s/_____

James Connelly, Chairman

_/s/_____

W. Robert Keating, Commissioner

_/s/_____

Paul B. Vasington, Commissioner

_/s/_____

Eugene J. Sullivan, Jr., Commissioner

_/s/_____

Deirdre K. Manning, Commissioner

1. In April 2000, Greater Media notified the Department that Greater Media would not continue to seek an interconnection agreement with Verizon, and, on April 6, 2000, the Arbitrator closed the docket in D.T.E. 99-52.

2. Section 252(b)(1) of the Telecommunications Act of 1996 ("1996 Act") permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers.

3. The "placeholder" language establishing interim transport rates allowed all other rates, terms, and conditions of the parties' interconnection agreement to go into effect.

4. Under the 1996 Act, incumbent local exchange carriers ("ILECs") are required to provide unbundled network elements ("UNEs") such that requesting carriers (i.e., competitive local exchange carriers ("CLECs")) can combine these elements to provide telecommunications services. 47 U.S.C. § 251(c)(3). Unbundled IOF include dedicated transport, which is defined as "[ILEC] transmission facilities . . . dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by [ILECs] or [CLECs], or between switches owned by [ILECs] or [CLECs]." 47 C.F.R. § 51.319(d)(1)(i).

5. A mid-span fiber meet ("MSM") is a type of interconnection architecture whereby two carriers' transmission facilities meet at a mutually agreed upon point of interconnection ("POI" or "meet point") with the POI in the middle of a fiber ring. Each party builds half a fiber ring and purchases and maintains all the fiber and electronics for its half of the ring. See D.T.E. 99-42/43, 99-52, at 13 n.12 (1999). AT&T Broadband and Verizon have jointly-owned MSMs in Lawrence and Brockton (Kowolenko Aff. at ¶ 5, Att. 1). MSM facilities consist of the meet point, fiber transport facilities, and terminating electronics (e.g., multiplexers and digital cross-connect systems) located in Verizon's and AT&T Broadband's respective serving wire centers ("SWCs") (id.

at ¶¶ 5-6; Howard Aff., Diagram #1). The meet points of these MSMs are located near Verizon's SWCs, which Verizon describes as "gateway central offices" (Kowolenko Aff. at ¶ 5; Howard Aff., Diagram #1). Under the pending agreement between the parties, AT&T Broadband and Verizon will split the construction costs of the MSM facilities equally, allot each other 50 percent of the capacity of each MSM, and transport each other's traffic over the MSM architecture for interconnection purposes at no charge (Kowolenko Aff. at ¶ 12; VZ-MA Brief at 6).

6. A "remote" tandem in the instant case is any tandem subtended by the end office of a destination end user that is not the tandem or end office located nearest to the MSM (see Kowolenko Aff. at ¶¶ 9-11). Both carriers are responsible for delivering their traffic (either through self-provisioning or leasing another carrier's transport) from the MSM to the terminating carrier's appropriate interconnection point ("IP"), which may be located at a remote tandem or end office. See D.T.E. 99-42/43, 99-52, at 16-17 (2000). The IP is the point on the terminating carrier's network from which the terminating carrier will provide

transport and terminate on its network a local call delivered by an originating carrier. Id. at 6 n.3.

7. Verizon emphasizes that the FCC requires ILECs to provide CLEC access to UNE IOF only through the use of the CLEC's own network facilities or other UNEs, but that the FCC does not require ILECs to provide access to UNEs through the ILEC's own facilities (VZ-MA Brief at 5).

8. Verizon points to D.T.E. Tariff No. 17, Part B, Sec. 2.1.1.B, which indicates that some form of CLEC collocation or direct connection is necessary for a CLEC to interconnect with the appropriate Verizon central office via UNE IOF, and Section 2.1.1.A.2 which specifically states that unbundled dedicated IOF transport is not provided with MSMs (VZ-MA Brief at 5, 7 n.9; VZ-MA Reply Brief at 5 n.4). Verizon also refers to Part E, Sec. 1.5.1.A.2, under which Verizon offers transport related to meet point interconnection under access tariff terms and conditions (VZ-MA Brief at 8).

9. See n.8, above. Verizon suggests that AT&T Broadband, through its affiliation with AT&T Communications of New England, Inc. ("AT&T"), has access to AT&T's existing collocation arrangements located in almost all of Verizon's central offices where a tandem is located (VZ-MA Reply Brief at 8). Access to AT&T's collocation arrangements, argues Verizon, would mean that AT&T Broadband could connect to UNE IOF without incurring any additional facilities costs (id.).

10. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, at ¶ 553 (rel. August 8, 1996) ("Local Competition Order") (internal footnotes omitted and emphasis added).

11. Even if the Department were to include the parties' agreement to split the costs of the existing MSMs in its review, we note that both Verizon and AT&T Broadband would continue to receive benefits from the mutual exchange of traffic provided by the MSMs whether or not the MSM was also used for AT&T Broadband's access to UNEs.

12. Verizon refers to the FCC's description of the meet point for UNE access as "a part of the new entrant's network . . . used to carry traffic from one element in the new entrant's network to another." Local Competition Order at ¶ 553. We have, however, already concluded that in that paragraph the FCC was not referring to the situation in the instant case (i.e., a MSM sought to be used for *both* interconnection and UNE access).

13. In fact, we may find it desirable to re-examine the provisions of D.T.E. Tariff No. 17 that Verizon claims prohibit a CLEC from accessing UNEs via a MSM.